

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Playa Del Sol Broadcasters
Licensee of Station KRCK-FM
Mecca, California

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File No. EB-02-SD-288
NAL/Acct. No. 200332940004
FRN: 000-425-6426

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 31, 2003

By the Enforcement Bureau: San Diego Office

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Playa Del Sol Broadcasters (“Playa Del Sol”), the licensee of broadcast station KRCK-FM, apparently willfully violated Sections 11.35, 11.61 and 73.1125 of the Commission’s Rules (“Rules”),¹ by failing to ensure that required Emergency Alert System (“EAS”) equipment was operational, by failing to conduct required tests of the station’s EAS equipment and by failing to maintain a local main studio. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Playa Del Sol Broadcasters is apparently liable for forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. Playa Del Sol was issued a license to serve the community of Mecca, California, on June 20, 2001, under call sign KRCK-FM. On November 13, 2002, an agent from the Federal Communications Commission’s (“FCC”) San Diego office attempted to conduct a routine inspection of the EAS equipment of station KRCK-FM. However, the agent was unable to locate a studio for KRCK-FM in the Palm Springs – Mecca, California, area. The agent checked the local telephone directories and called the toll free telephone directory assistance operator for a contact number for KRCK-FM and Playa Del Sol, but none was listed. The agent contacted Playa Del Sol requesting the location of the KRCK-FM main studio. Playa Del Sol responded that the main transmitter site was serving as the main studio pending the expected completion of construction of a new main studio in Palm Desert, California, on or before December 1, 2002.

¹ 47 C.F.R. §§ 11.35, 11.61, and 73.1125.

² 47 U.S.C. § 503(b).

3. On December 2, 2002, two agents from the FCC's San Diego office attempted to conduct an inspection at KRCK-FM's nearly completed studio in Palm Desert, California. The agents found no staff present at the new studio. The agents contacted Playa Del Sol's owner/general manager via the telephone numbers listed on the outside of the studio door. Playa Del Sol's owner met the agents at the new studio later that day. He advised that construction of the new studio would be completed by next week. He also advised that the station's EAS equipment was and had been located for the past year at the old main studio at the transmitter site near Mecca, California. He further stated that because the studio in Mecca, California, was not easily accessible, most of their listeners would contact KRCK-FM via their toll free number or their website which both were announced frequently over-the-air.

4. Later on December 2, 2002, accompanied by Playa Del Sol's owner, the agents inspected the KRCK-FM transmitter site in Mecca, California. The transmitter building was located on a dirt road, with a locked fence blocking the entrance and no apparent public access to the building. The owner provided the agents access to the transmitter building. There was no evidence that any main studio had been present. There were no desks, phones, or restroom facilities in the small windowless building. The general manager acknowledged that no main studio actually existed at the transmitter site.

5. The station's EAS equipment was, however, located at the transmitting site. No formal station log of EAS tests was maintained and the automatic printouts from the EAS equipment served as the station log. The printouts indicated the EAS equipment was out of service from December 30, 2001, until March 10, 2002. No records existed regarding any attempt by Playa Del Sol to determine the cause of the EAS equipment failure. No request for additional time to repair the KRCK-FM EAS equipment was ever received by the San Diego FCC office.

6. The EAS printouts revealed Playa Del Sol did not retransmit any required monthly tests at KRCK-FM during the calendar year 2002 and only received one required monthly test during 2002. The printouts also reveal that Playa Del Sol did not regularly conduct, receive or transmit the required weekly tests at KRCK-FM. In fact, only seven required weekly tests were retransmitted during all of 2002. No records existed regarding any attempt by Playa Del Sol to determine the cause of the failures to receive the required EAS tests. At the time of the inspection of the station's EAS equipment, the equipment was set to monitor only one EAS source.

III. DISCUSSION

7. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.³ The term "willful" as used in Section 503(b) has

³ 47 U.S.C. § 503(b).

been interpreted to mean simply that the acts or omissions are committed knowingly.⁴ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁵

8. Section 73.1125(a) of the Rules generally requires broadcast stations to maintain a main studio at one of the following locations: (i) within the station's community of license; (ii) at any location within the principal community contour of any AM, FM, TV broadcast station licensed to the station's community of license; or (iii) within twenty-five miles from the reference coordinates of the center of its community of license. In adopting the main studio rules, the Commission stated that the station's main studio must have the capability to serve the needs and interests of the residents of the station's community of license.⁶ To fulfill this function, a station must, among other things, maintain a meaningful presence at its main studio.⁷ The Commission has defined a minimally acceptable “meaningful presence” as full-time managerial and full-time staff personnel.⁸ The licensee need not have the same staff person and manager at the studio, as long as there was management and staff presence there during normal business hours.⁹ Although management personnel need not be “chained to their desks” during normal business hours, they must “report at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a home base.”¹⁰ Although Playa Del Sol's owner initially stated that KRCK-FM's transmitter building was temporarily serving as a main studio, he acknowledged what was apparent at the time of the inspection: KRCK-FM had no main studio presence in the community at the time of the inspection. The transmitter building was contained within a locked fence and therefore was inaccessible to the public; there was little room and no normal office facilities in the transmitter building; there was no listing for KRCK-FM or Playa Del Sol in the local telephone directory; and Playa Del Sol did not maintain a meaningful management and staff presence at the transmitter site. Therefore, based on the evidence, we conclude that Playa Del Sol failed to maintain a main studio in apparent willful and repeated violation of Section 73.1125 of the Rules.¹¹

9. Commission licensees are responsible for familiarizing themselves and complying with applicable statutes and Commission Rules and policies, regardless of the length of time the licensee has been

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ Section 312(f)(2), 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

⁶ *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), *clarified*, 3 FCC Rcd 5024, 5026 (1988).

⁷ *Id.*

⁸ *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified*, 7 FCC Rcd 6800 (1992).

⁹ *Id.*, 6 FCC Rcd at 3616, n.2.

¹⁰ *Id.*, 7 FCC Rcd at 6802.

¹¹ See *B&C Kentucky, LLC*, 16 FCC Rcd 9305 (Mass Media Bur., Video Services Div., 2001) (concluding that a television licensee's transmitter building was not a main studio where no employees regularly worked at that location, no production equipment or station files were maintained there, and the building was contained within a locked fence and therefore was inaccessible to the public).

engaged in broadcasting.¹² The Rules provide that all broadcast stations are part of the nationwide EAS network and are categorized as participating as national EAS sources unless a station affirmatively requests authority to not participate.¹³ The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.¹⁴ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.¹⁵ The Rules require stations to monitor at least two separate sources specified by the state EAS plan.¹⁶

10. The Rules specifically require broadcast stations¹⁷ to install and make operational EAS equipment (encoders, decoders, attention signal generators and receivers) so that monitoring and transmitting functions are available during the times whenever the station is in operation.¹⁸ The Rules also require broadcast stations to (a) receive monthly EAS tests from designated local primary EAS sources and retransmit the monthly test within 60 minutes of its receipt and (b) conduct tests of the EAS header and EOM codes at least once a week at random days and times.¹⁹ Stations must also determine the cause of any failure to receive the required EAS tests, and make appropriate entries in the station log indicating why the required tests are not received.²⁰

11. If a broadcast licensee's EAS equipment fails and must be taken out for service, the Rules require the licensee to note in the station log that the EAS equipment failed and the reasons why the failure occurred.²¹ If the failure cannot be corrected within 60 days, the Rules require the licensee to make an informal request to the District Director of the FCC field office serving the area for additional time to make necessary repairs.²² The request must explain fully why additional time is necessary and when repairs are expected to be completed.

12. Playa Del Sol did not retransmit a single required monthly test on KRCK-FM during 2002, retransmitted only 7 required weekly tests during 2002, and was monitoring only one EAS source.

¹² See *Bay Television, Inc.*, 10 FCC Rcd 11509 (1995) (rejecting licensee's request for lenient treatment because it had been on the air for barely six months.); *Radio One Licensees, Inc.*, Memorandum Opinion and Order, DA 02-219 (Enf. Bur. Jan 31, 2002) (rejecting licensee's request for lenient treatment because the station had been acquired less than six months before, noting also that the licensee was an experienced broadcaster).

¹³ 47 C.F.R. §§ 11.11 and 11.41.

¹⁴ 47 C.F.R. §§ 11.1 and 11.21

¹⁵ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

¹⁶ 47 C.F.R. § 11.52(d).

¹⁷ 47 C.F.R. § 11.11.

¹⁸ 47 C.F.R. § 11.35.

¹⁹ 47 C.F.R. § 11.61. The required monthly and weekly tests are required to conform with the procedures in the EAS Operational Handbook. See also, *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket No. 01-66, *Report and Order*, FCC 02-64 (Feb. 26, 2002); 67 Fed Reg 18502 (April 16, 2002) (effective May 16, 2002, the required monthly EAS test must be retransmitted within 60 minutes of receipt.)

²⁰ 47 C.F.R. § 11.35.

²¹ 47 C.F.R. § 11.35(b).

²² 47 C.F.R. § 11.35(c).

The station's EAS equipment was out of service for more than 60 days in the beginning of 2002. No records existed indicating any attempt by Playa Del Sol to ascertain why the equipment was not operating or why the required monthly and weekly tests were not being received or retransmitted. Based on the evidence, we find that Playa Del Sol Broadcasters willfully and repeatedly violated Sections 11.35 and 11.61 of the Rules by failing to have EAS equipment fully operational throughout 2002, failing to conduct required weekly and monthly EAS tests, failing to receive two EAS sources, failing to determine why the EAS equipment was not receiving the required EAS tests and failing to log the test failures.

13. Based on the evidence before us, we find that Playa Del Sol, willfully and repeatedly violated Sections 11.35, 11.61, and 73.1125 of the Rules, by failing to have EAS equipment properly operational, failing to monitor, receive and retransmit required monthly and weekly EAS tests and failing to ascertain the cause of and log EAS equipment failures, and failing to maintain a main studio. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*,²³ the base forfeiture amount for EAS equipment not installed or operational is \$8,000 and the base forfeiture for failing to maintain a main studio is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.²⁴ In applying Section 1.80(b)(4) of the Rules and the statutory factors to the instant case, we find no compelling evidence to support any adjustments to the base forfeiture amounts. Therefore, a total forfeiture in the amount of \$15,000 is warranted.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Playa Del Sol Broadcasters, is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of fifteen thousand dollars (\$15,000) for violating Sections 11.35, 11.61 and 73.1125 of the Commission's Rules.²⁵

15. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Playa Del Sol Broadcasters, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

16. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Account number referenced in the caption.

²³ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

²⁴ 47 U.S.C. § 503(b)(2)(D).

²⁵ 47 C.F.R. §§ 0.111, 0.311, 1.80, 11.35, 11.61 and 73.1125.

Federal Communications Commission

17. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, DC 20554 and must include the NAL/Acct. number referenced in the caption.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operation Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁶

20. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities ("OCBO") set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

21. IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent, by certified mail, return receipt requested, to Playa Del Sol Broadcasters, 801 K Street, 27th Floor, Sacramento, CA 95814.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears Jr.
District Director - San Diego Office

²⁶ See 47 C.F.R. § 1.1914.

Enc.: Attachment A

FCC List of Small Entities

As described below, a “small entity” may be a small organization,
a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer \$12.5 Million in Annual Receipts or Less
Cable and Other Program Distribution	
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	
Note: With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 C.F.R. §121.104 and 13 C.F.R. § 121.106, respectively.	
<i>International Services</i>	
International Broadcast Stations	
International Public Fixed Radio (Public and Control Stations)	

Fixed Satellite Transmit/Receive Earth Stations	\$12.5 Million in Annual Receipts or Less
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
Mass Media Services	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	
	Auction Special Size Standard – Small Business is less than \$40M in annual gross revenues for three preceding years
Wireless and Commercial Mobile Services	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	
700 MHZ Guard Band Licensees	Auction special size standard - Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - Small Business is \$40M or less in annual gross revenues for three previous calendar years Very Small Business is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - Small Business is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	Small Business is 1,500 employees or less Small Government Entities has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	

	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
39 GHz Service	
Multipoint Distribution Service	Auction special size standard (1996) – Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
218-219 MHZ Service	First Auction special size standard (1994) – Small Business is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Miscellaneous	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)

